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IN THE
COURT OF APPEALS OF INDIANA

ANDRE ECHOLS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0608-CR-699
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0508-FB-252

March 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Andre Echols appeals the sentence imposed following his plea of guilty to two counts of robbery, as class B felonies[1] and three counts of confinement, as class B felonies.[2]

We affirm.

ISSUE

Whether the trial court erred in sentencing Echols.

FACTS

On August 26, 2005, Echols and Raymon Coleman entered Cal Cars, a used-car dealership located in Madison County. Coleman, who had a gun, and Echols forced three employees to open a safe. Echols then bound the employees with duct tape and dragged them into a back room. Echols and Coleman took $7,000.00 from the safe and a purse belonging to Sally Ludwig, one of Cal Cars' employees.

On August 31, 2005, the State charged Echols with two counts of robbery, as class B felonies. On September 19, 2005, the State filed an amended information, adding three counts of criminal confinement, as class B felonies.

On February 27, 2006, Echols pled guilty to the robbery charges and moved to dismiss the criminal confinement charges. The trial court set a sentencing hearing on the robbery charges for April 4, 2006 and ordered a pre-sentence investigation report ("PSI"). According to the PSI, Echols had juvenile adjudications for the following: battery in

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[1] Ind. Code § 35-42-5-1.

[2] I.C. § 35-42-3-3.

1999, intimidation in 2000, sexual battery in 2000, failure to wear a seat belt in 2001 and speeding in 2003. As an adult, Echols had a speeding conviction.

On April 4, 2006, the trial court held a sentencing hearing, during which Echols pled guilty to the remaining charges. Following testimony from Ludwig, Echols and members of Echols' family, the trial court found, in part, the following:

> The two aggravators, I think, have been well identified . . . . There is a legal history of juvenile adjudications of battery, sexual battery, and intimidation. So the legal history you bring to today's sentencing hearing is an aggravating circumstance. And, the second identified, actually mentioned just now[:] . . . multiple victims. . . . Let me address quickly, the mitigating circumstances . . . . The first two . . . are remorse and acceptance of responsibility and I think those are both valid mitigators . . . . But we always say that when people plead guilty and I don't have any reason to doubt your mother's testimony or your testimony . . . [a]nd I'm willing to take you at your word and your mother at her observation that you have some recognition of the harm that you have done. So, remorse, acceptance of responsibility.

(Tr. 61-63). Further, in its sentencing order, the trial court identified the following aggravating and mitigating circumstances:

> The Court finds aggravation: 1) defendant's prior legal history; 2) there were multiple victims in this crime. The Court finds mitigation: 1) defendant shows remorse and the defendant plead [sic] guilty to the instant offense saving the State the time and cost of trial; 2) defendant was under psychological stress due to his ill child.

(App. 39). On each count, the trial court sentenced Echols to fifteen years, with five years suspended. The trial court ordered that the sentences be served concurrently. Thus, Echols received an executed sentence of ten years.

DECISION

Echols asserts that the trial court found an improper aggravating circumstance and improperly balanced aggravating and mitigating circumstances. Echols further asserts that his sentence of fifteen years on each count is inappropriate.[3]

The State argues that Echols' arguments regarding the finding and balancing of aggravating and mitigating circumstances are not valid "under the amended sentencing statutes." State's Br. 5. Citing Indiana Code section 35-38-1-7.1(d),[4] the State contends that because trial courts "may impose any authorized sentence regardless of aggravating or mitigating circumstances," we should no longer review "whether the trial court properly weighed and balanced aggravating and mitigating circumstances." State's Br. 4, 5. We disagree.

Indiana Code section 35-38-1-3 provides that prior to sentencing, the trial court must conduct a sentencing hearing and make a record of the hearing, including, "if the court finds aggravating circumstances or mitigating circumstances, a statement of the court's reasons for selecting the sentence that it imposes." Thus, "[e]ven under the new

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[3] Because Echols committed his offenses in August of 2005, Indiana's new advisory sentencing scheme, which went into effect on April 25, 2005, applies. Pursuant to Indiana Code section 25-50-2-5, "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

[4] Subsections (a) and (b) of Indiana Code section 35-38-1-7.1 list aggravating and mitigating circumstances that a trial court "may consider" when determining what sentence to impose. Indiana Code section 35-38-1-7.1(d), however, provides:

> A court may impose any sentence that is:
> (1) authorized by statute; and
> (2) permissible under the Constitution of the State of Indiana;
> regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

statutes, an assessment of the trial court's finding and weighing of aggravators and mitigators continues to be part of our review on appeal." *McMahon v. State*, 856 N.E.2d 743, 748 (Ind. Ct. App. 2006); *Gibson v. State*, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006) (assuming that, until the Indiana Supreme Court holds otherwise, "it is necessary to assess the accuracy of a trial court's sentencing statement if . . . the trial court issued one, according to the standards developed under the 'presumptive' sentencing system . . ."). [5] We therefore "merge our review of the trial court's finding and balancing of aggravators and mitigators under Indiana Code § 35-38-1-7.1 into our review for inappropriateness under Appellate Rule 7(B)." *Id.*

Here, Echols asserts that his sentence is inappropriate "in view of the nature of the offense and the character of the defendant which included strong mitigating factors of accepting responsibility for his actions, expressing remorse and pleading guilty." Echols' Br. 14. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B); *Ruiz v. State*, 818 N.E.2d 927, 928 (Ind. 2004). As discussed, an examination of a defendant's sentence may "include a challenge to the aggravating and mitigating circumstances found by the trial court under Indiana Code § 35-38-1-7.1." *McMahon*, 856 N.E.2d at 749.

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[5] We note that in *Windhorst v. State*, 858 N.E.2d 676 (Ind. Ct. App. 2006), a panel of this court disagreed with *McMahon*'s stance that sentencing statements are required where a trial court relies on mitigating or aggravating circumstances to impose a sentence other than the advisory, contemplating that "the *McMahon* court's imposition of such a requirement will resurrect the very Sixth Amendment problems that the legislature sought to eliminate with its amendment of Indiana's sentencing scheme." 858 N.E.2d at 678 n.2. The Indiana Supreme Court, however, has granted transfer of *Windhorst*, thereby automatically vacating that opinion.

> Therefore, if a trial court relies upon aggravating or mitigating circumstances to impose a sentence other than the advisory, it must: (1) identify all significant mitigating and aggravating circumstances; (2) state the specific reason why each circumstance is determined to be mitigating or aggravating; and (3) articulate the court's evaluation and balancing of the circumstances.

Id. at 749-50. A review of the appropriateness of a sentence, however, is not limited "to a simple rundown of the aggravating and mitigating circumstances found by the trial court." *Id.* at 750. Rather, we "assess the trial court's recognition or nonrecognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed . . . is inappropriate." *Gibson*, 856 N.E.2d at 142 (emphasis added).

Echols contends that the trial court failed to give proper weight to his guilty plea. "Our courts have long held that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return." *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). A guilty plea, however, is not necessarily a significant mitigating factor. *Id.* Furthermore, the trial court need not agree with the defendant as to the weight or value to be given to proffered mitigating circumstances. *Sipple v. State*, 788 N.E.2d 473, 480 (Ind. Ct. App. 2003), *trans. denied*.

In this case, Echols received a benefit from his guilty plea, namely that the State would agree to concurrent sentences. Accordingly, we cannot say that the trial court attached insufficient weight to Echols' guilty plea.

Echols also contends that his prior criminal history does "not justify the enhanced sentenced [sic] which was imposed." Echols' Br. 10. "The significance of a criminal history 'varies based on the gravity, nature and number of prior offenses as they relate to

the current offense.'" *Stewart v. State*, 840 N.E.2d 859, 864 (Ind. Ct. App. 2006) (quoting *Wooley v. State*, 716 N.E.2d 919, 929 n.4 (Ind. 1999), *reh'g denied*), *trans. denied*.

Here, Echols had prior offenses for crimes of violence, including battery and sexual battery. Given the number and nature of Echols' prior offenses, his prior criminal history is sufficient to support an enhanced sentence.

Echols further contends that "[t]he fact that there were multiple victims was not a proper aggravating factor" because "[m]ultiple victims are an inherent component of committing three confinements." Echols' Br. 8. We disagree, as "the existence of multiple victims is a valid aggravator." *French v. State*, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005) (finding trial court properly imposed consecutive sentences where defendant pled guilty to six counts of criminal confinement), *trans. denied*.

Given the aggravating and mitigating circumstances, we find Echols' sentence to be appropriate. Furthermore, as detailed below, the facts of this case support Echols' sentence.

Ludwig testified that Echols bound three employees of Cal Cars with duct tape even though the employees fully cooperated with Echols and Coleman. Ludwig further testified that she sustained injuries to her shoulder and arm from Echols binding her hands and dragging her by her arms into the back room. Ludwig also testified that she has suffered emotional trauma and has had to seek psychological treatment as a result of Echols' actions.

Despite Ludwig's testimony, Echols refused to take full responsibility for his actions. During sentencing, Echols denied doing anything to hurt Ludwig and even asserted that it was "not possible for her to be injured[.]" (Tr. 52).

Given the facts of the case, Echols' escalating crimes of violence and Echols' refusal to acknowledge and take full responsibility for his wrongdoing, we cannot say that Echols' sentence is inappropriate.

Affirmed.

BAKER, J., and ROBB, J., concur.